

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOHN C. AUSTERMAN,

Case No. 3:15-cv-00287-RCJ-WGC

Petitioner,

ORDER

v.

ISIDRO BACA, et al.,

Respondents.

This is a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, submitted by John C. Austerman, a Nevada state prisoner (ECF No. 4). On November 9, 2015, the court denied Austerman's motion for appointment of counsel. Before the court is his second motion for appointment of counsel (ECF No. 7).

As this court stated previously, there is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is a person of such limited education as to be incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). In his second motion, Austerman mainly claims that the "paging system" used to request law library materials at Northern

1 Nevada Correctional Center impedes his ability to litigate this petition. Nevertheless,
2 Austerman's petition appears sufficiently clear in presenting the legal issues. Further,
3 he has, even if with the help of other inmates, demonstrated an ability to file several
4 coherent motions with this court. Petitioner's second motion for counsel shall be
5 denied.

6 **IT IS THEREFORE ORDERED** that petitioner's second motion for appointment
7 of counsel (ECF No. 7) as well as his motion for reconsideration of the denial of his first
8 motion for appointment of counsel (ECF No. 9) are both **DENIED** as set forth in this
9 order.

10 **IT IS FURTHER ORDERED** that respondents' motion for extension of time to file
11 a response to the petition (ECF No. 8) is **GRANTED** *nunc pro tunc*.

12 **IT IS FURTHER ORDERED** that petitioner's motion for extension of time to file
13 his opposition to respondents' motion to dismiss (ECF No. 18) is **GRANTED**. Within
14 **forty-five (45) days** of the date of this order, petitioner shall file and serve his
15 opposition.
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18 DATED: 20 April 2016.

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21 ROBERT C. JONES
22 UNITED STATES DISTRICT JUDGE
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